

REAL PARTY IN INTEREST

International Business Machines Corporation, the assignee of record as evidenced by the Assignment recorded at Reel 010730 and Frame 0407, is the real party in interest in the subject Appeal.

RELATED APPEALS AND INTERFERENCES

No appeals or interferences known to Appellant, Appellant's legal representative, or assignee will directly affect or be directly affected by or have a bearing on the Board's decision in the present Appeal.

STATUS OF THE CLAIMS

Claim 6-7, 13-14 and 20-21 are pending, and stand finally rejected by the Examiner as noted in the final rejection dated November 18, 2003. The rejection of those pending claims is appealed.

STATUS OF AMENDMENTS

No Amendment was proposed or entered subsequent to the final rejection dated November 18, 2003.

SUMMARY OF THE INVENTION

The present invention allows content-based access control to be readily implemented and uniformly affected across all communications protocols supported by a data processing system. Changes to access restrictions within folders or applications based on content need only be entered by a privileged user once, and are distributed to all communications programs within the data processing system for implementation. Thus, for example, a parent setting access control restrictions for their child on a web browser (e.g. Internet Explorer) will have the same access control restrictions automatically set for a news reader (e.g., Outlook Express), even if the parent is unaware of the existence of the news reader. Communications programs which are later installed on the computer system check for access restrictions set by the authorized user during installation, for example, by checking for restrictions other communications programs already installed on the system.

As explained in the present specification on page 8, line 16 *et seq*, the client computer includes functionality supporting different communications protocols for transmitting content, including a web browser, news reader, mail program and a file manager. As explained on page 9, line 8 *et seq*, of the present specification, the client includes an access control module 122 that permits a privileged user to regulate the accessibility of content label categories on the computer system according to passwords. In contrast to the prior art where such a control mechanism controls a single communications program, the present invention provides a single interface for establishing regulation of all communications protocols supported within the client computer system, not merely the web browser.

As explained on page 10, line 13 of the present specification, the content filtering is performed based on content labels preferably stored within or in association with content as metadata. For HTML content, existing content labeling may be employed. As will be appreciated, because content label categories and associated user restrictions are distributed to all communication programs within the computer system, regardless of the communications protocols employed or when they were installed, the content label restrictions set within the system are uniformly managed and enforced across all communications protocols used by the computer system. Thus, for example, the situation may be avoided in which a parent sets access restrictions for a child for an Internet Explorer browser installed within the system, yet the child subsequently downloads and installs a Netscape Navigator browser on the system to circumvent the restrictions. Moreover, because the access control module operates across different communications protocols, users on the system cannot bypass the content restrictions by accessing non-HTTP data which does not contain content labels, or by utilizing non-HTTP protocols which do not support content restriction. For example, without the present invention, the prior art content label systems permit a user to retrieve binary image data containing prohibited content utilizing the FTP engine of a browser, which does not provide content-based access for non-HTTP protocols, or receive similar content as an attachment to an electronic mail message. As can be seen, the present invention protects against these simple work-arounds that have previously rendered existing browser content control methodologies ineffective.

ISSUE

Is the Examiner's rejection of claim of 6-7, 13-14 and 20-21 under 35 USC § 103(a) is being unpatentable over Internet Explorer 4 well-founded?

GROUPING OF THE CLAIMS

For purposes of this appeal, there is a single group of claims: Claims 6-7, 13-14 and 20-21, which stand or fall together.

ARGUMENT

A. Internet Explorer Does Not Suggest Setting Access Controls for Two Communications Programs

On page 3 of the Final Office Action, Claims 6-7, 13-14, and 20-21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Internet Explorer 4. That rejection is respectfully traversed and reconsideration of the claims is requested.

Appellant believes that the claims in the present application are not rendered unpatentable by Internet Explorer 4 under 35 U.S.C. § 103 because that reference does not teach or suggest one or more features recited in the claims herein. For example, Internet Explorer does not teach or suggest the following feature recited in claim 6 of the present application:

*setting access controls for at least two of the communications programs
within the data processing system that employ different communications protocols
as a function of the content label categories and associated user restrictions.*

The Examiner argues that this element is shown by Internet Explorer 4 in combination with Microsoft Chat. However, neither the reference provided by the Examiner in the Final Office Action ("Internet Explorer 4 for Windows for Dummies"), the screen shots provided within the Final Office Action, the Internet Content Rating Association web site cited by the Examiner in form PTO-892 provided with the Advisory Action dated January 8, 2004, nor any of the screen shots provided within the Advisory Action dated January 8, 2004 makes any teaching or suggestion that the "Content Advisor" functionality of Internet Explorer 4 applies in any

manner to Microsoft Chat. The Examiner has not presented any evidence that Microsoft Chat was subject to any content filter functionality whatsoever, let alone that Internet Explorer 4 provided any such content filter functionality to Microsoft Chat.

Appellants shall assume for purposes of argument that Content Advisor's content-specific filtering is enabled within the HTTP engine of the Internet Explorer browser, but Appellants specifically dispute the Examiner's assertion that such content-specific filtering is performed in any manner in the Microsoft Chat program. No evidence has been put forth that shows or suggests Content Advisor within Internet Explorer affected the completely separate and distinct software application Microsoft Chat. Moreover, the Examiner has failed to present evidence to support any suggestion in the prior art to combine Content Advisor with Microsoft Chat in the manner argued. The showing of a suggestion, teaching or motivation to combine the prior art references must derive from clear and particular evidence. "This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not 'evidence.'" *Brown & Williamson Tobacco Corp. v. Phillip Morris, Inc.*, 229 F.3d 1120, 56 USPQ2d 1456 (Fed. Cir. 2000), citing *In re Dembiczak*, 175 F.3d at 1050 USPQ2d at 1617).

Thus, whether or not Internet Explorer 4 or Microsoft Chat imply at least two communication programs employing different communication protocols, the Examiner has failed to present evidence that the prior art taught or suggested "*setting access controls for at least two of the communication programs*," as is recited in claim 6. Moreover, there does not appear any motivation or suggestion in Internet Explorer 4 to combine or modify Internet Explorer 4 to apply such Content Advisor functionality to the Microsoft Chat program. Consequently, Appellants respectfully submit that the Examiner has not presented a *prima facie* case of obviousness¹ and that the rejection of claim 6 under Section 103 should be withdrawn.

¹ To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). MPEP § 2142-2143.

It is argued by the Examiner in the Advisory Action dated January 8, 2004:

Before having a chat in the Internet by using Microsoft Chat as a communication program, the user has to be on the Web site that homes the chat room. Based on the setup of Internet Explorer and the rating level of the web site that homes the chat room, a chat by using Microsoft Chat could be restricted as discussed in the Office Action.

Appellants respectfully traverse the Examiner's position. Microsoft Chat is a separate executable communications' program that operates using Internet Relay Chat Protocol to independently connect to chat servers through the Internet and does not use web pages to gain access to the chat servers.

Microsoft Chat is a separate executable program that was bundled as part of the package delivered with Internet Explorer 4.0. These are two independent software programs that are in no way integrated or part of the same software application, and use totally independent communication protocols to communicate. As explained in the Microsoft Chat README document that accompanies a distribution of Microsoft Chat (a copy of which has been cited by Appellant in an IDS mailed on January 30, 2004 and resubmitted on April 16, 2004), Microsoft Chat connects directly to chat servers utilizing the IRC protocol and not through a web site. At the top of page 2 of the Microsoft Chat README Document (IDS Ref. No. E), the steps for connecting to a chat room are described. In step #1, it is explained that Microsoft Chat is an application program that is executed by running the program from the "Start" button. In step #2, a connection dialog box provided by Microsoft Chat permits the IRC server name and Chat room box to be input for connecting to a Chat room on the server.

Moreover, as explained at the bottom of page 1 of the "Microsoft Chat Guide," (Ref. No. C IDS *supra*), Microsoft Chat uses the Internet Relay Chat (IRC) protocol, and "Note that this is not the same system as AOL Chat, or MSN Chat, or a chat you use inside of a web page!." Access to these servers is direct, using their Uniform Resource Locator (URL) address, and not using HyperText Transfer Protocol (HTTP) via web pages of the World Wide Web.

As will be appreciated, these references clearly teach that Microsoft Chat is a separate executable communications' program that operates to independently connect to chat servers

through the Internet and to provide chat functionality to the user. Microsoft Chat does not use “http” web pages to gain access to the chat servers.

B. ICRA Rating System Does Not Suggest Setting Access Controls for Two Communications Programs

The Examiner raises a new ground for rejecting the present invention in the Advisory Action dated January 8, 2004 by arguing that, because Internet Explorer’s Content Advisor provides for a rating selection on “Chat” through the ICRA rating system, the Content Advisor functionality also filters access to Microsoft Chat. Not only was this theory never raised in the Final Rejection, there is no evidence in the record to support this conclusion.

Content Advisor uses a labeling system whereby the HTML content advisory tags within a specific URL web page include tags about sex, violence and chat. However, this labeling system only operates to notify filtering software when a particular web site provides chat functionality within the HTTP web page. It is clear that the Chat label within the ICRA rating system is implemented within Content Advisor to provide filtering functionality to web pages accessed by the web browser having Web-based Chats. The “Chat” label is in no way used or capable of filtering Internet Relay Chat protocol servers. Web-based Chat and IRC Chat are different technologies. (See IDS, *supra*, reference F, “Accessibility of Online Chat Programs” for definitions of IRC and Web-based Chats.) There is nothing within the prior art to suggest that Internet Explorer 4 somehow extends or could be modified to extend its Content Advisor ICRA filtering functionality to the separate and distinct Microsoft Chat program.

C. ICRA Does Not Constitute Prior Art

In the alternative, Appellants submit that, whether or not suggesting the present invention, the ICRA was created after the invention by the Appellants, and therefore does not constitute prior art for purposes of patentability. As shown within the press release by Internet Content Rating Association dated 13 December 2000 (provided as Reference A in the IDS, *supra*), ICRA did not launch its rating system until December 2000, months after the April filing date in the present application. As further explained on the Project Interconnect web site (provided as IDS, *supra*, Reference B), ICRA is an independent non-profit organization

established in the spring of 1999, and their rating system was not launched until 2000.

To remove any doubt, Appellants submitted a declaration under 37 CFR § 1.131 providing evidence that the present invention was invented at least as early as December 30, 1999. As there is no evidence in the record that the ICRA rating system was in existence in 1999, Appellants declaration establishes invention prior to the effective date of this reference. Therefore, ICRA does not constitute prior art and does not support the rejection of claims under 35 U.S.C. § 103(a).

On the continuation sheet for the Advisory Action dated March 23, 2004. The Examiner has stated that no consideration was made of the Declaration submitted under 37 CFR §1.131. The Examiner supports this lack of consideration based on MPEP 715.09. Appellants respectfully submit that our declaration under § 1.131 was timely submitted under either MPEP 715.09 (C)(1) or (C)(2).²

First, with respect to timely filing under MPEP 715.09 (C)(1), our declaration was submitted in response to the extensive and detailed Advisory Action dated January 8, 2004. In that Advisory Action, the Examiner raised new grounds of rejection in the present application and explicitly cited a new prior art reference, Internet Content Rating Association (ICRA), that had not been previously cited by the examiner in this case. In fact, a new form PTO 892 submitting this new reference into the record was provided along with the Advisory Action. The only connection between this new grounds of rejection and the Final Rejection was the RSAC, but nothing in RSAC, as taught in the Internet Explorer 4 reference and screen shots presented in the Final Office Action, suggested the present invention, which forced the Examiner to present the new reference in support of the rejection. Therefore, by submitting a declaration under §

² It is stated therein that the declaration must be timely presented in order to be admitted. It is further specified therein that Declarations are considered timely if submitted:

- (A) prior to a final rejection;
- (B) before appeal in an application not having a final rejection; or
- (C) after final rejection and submitted
 - (1) with first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection, or
 - (2) with a satisfactory showing under 37 CFR 1.116(b) or 37 1.195, or
 - (3) under 37 CFR 1.129(a).

1.131 to overcome this new reference, Appellants were, in essence, submitting the declaration with a “first reply” after a new final rejection for the purposes of overcoming a new ground of rejection, as is required under MPEP 715.09 (C)(1).

Second, under MPEP 715.09 (C)(2), Appellants respectfully submit that the declaration should properly be admitted pursuant to 37 CFR § 1.195³. Appellants’ submitted this declaration as a direct response to first learning of the existence of this reference in the Advisory Action received just one month prior. Appellants’ submission in its very next response, and shortly after the Examiner cited this new reference, could not have been submitted any sooner by any reasonable standard. Consequently, Appellants believe they have met the requirements under 37 CFR § 1.195 of showing good and sufficient reason why this Declaration was not earlier presented. Consequently, pursuant to MPEP 715.09 (C)(2), Appellants respectfully submit that the Examiner was mistaken in not admitting the Declaration and respectfully requests reconsideration.

³ § 1.195 states “affidavits, declarations, or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.”

CONCLUSION

For the reasons given above, Appellants respectfully request reversal of the rejection of claims 6-7, 13-14, and 20-21. The prior art does not disclose or suggest “*setting access controls for at least two of the communication programs within the data processing system that employ different communication protocols as function of the content label categories and associated user restrictions*” as recited in exemplary claim 6.

In summary, the current rejection is flawed for three reasons. First, as Appellants have shown above, there is absolutely no evidence that the Content Advisor functionality of Internet Explorer 4 in any mode or manner provides filtering functionality to the separate and distinct software application Microsoft Chat. Second, while the “Chat” labeling category of Content Advisor (using ICRA) provides a capability to filter Web-based Chats performed on HTML web pages, such Web-based Chats are typically Java-coded applications resident within an HTML web page using HTTP for communications and not the IRC protocol. Therefore, the Content Advisor (using ICRA) in Internet Explorer 4 in no way provides a filtering function for the Microsoft Chat program. Third, the ICRA does not constitute prior art and cannot support a rejection under § 103 because it was not created prior to the present invention. Consequently, Appellants believe that the rejection of claims 6-7, 13-14, and 20-21 in view of is overcome. Appellants submit that all pending claims are in condition for allowance and respectfully request such allowance.

Appellants believe the foregoing arguments clearly demonstrate that Internet Explorer 4 does not render claims 6-7, 13-14 and 20-21 unpatentable under 35 USC § 103(a). Appellants have made diligent efforts to advance the prosecution of this application by pointing out with particularity how the claim as presented are patentable over the prior art of record. A Notice of Allowance of the claims now pending in this application is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig YudeLL", is written over a horizontal line.

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APPENDIX A

6. A method of establishing access control within a data processing system, comprising:
- obtaining content label categories at the data processing system that present a unique label identifying the type of content for each respective category of a plurality of categories;
 - obtaining associated user restrictions at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories;
 - distributing the obtained content label categories and obtained associated user restrictions to each of a plurality of communications programs within the data processing system, wherein at least two of the communications programs employ different communications protocols; and
 - setting access controls for at least two of the communications programs within the data processing system that employ different communications protocols as a function of the content label categories and associated user restrictions.
7. The method of claim 6, further comprising:
- during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions, checking for existing access control settings for other communications programs and setting access controls for the communications program being installed utilizing the existing access control settings.
13. A system for establishing access control within a data processing system, comprising:
- means for obtaining content label categories at the data processing system that present a unique label identifying the type of content for each respective category of a plurality of categories;
 - means for obtaining associated user restrictions at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories;
 - means for distributing the obtained content label categories and obtained associated user restrictions to each of a plurality of communications programs within the data processing system,

wherein at least two of the communications programs employ different communications protocols; and

means for setting access controls for at least two of the communications programs within the data processing system that employ different communications protocols as a function of the content label categories and associated user restrictions.

14. The system of claim 13, further comprising:

means operable during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions for checking for existing access control settings for other communications programs and for setting access controls for the communications program being installed utilizing the existing access control settings.

20. A computer program product within a computer usable medium for establishing access control within a data processing system, comprising:

instructions for obtaining content label categories at the data processing system that present a unique label identifying the type of content for each respective category of a plurality of categories;

instructions for obtaining associated user restrictions at the data processing system defining at least one user's access privileges to each respective category of the plurality of categories as a function of the content label categories;

instructions for distributing the obtained content label categories and obtained associated user restrictions to each of a plurality of communications programs within the data processing system, wherein at least two of the communications programs employ different communications protocols; and

instructions for setting access controls for at least two of the communications programs within the data processing system that employ different communications protocols as a function of the content label categories and associated user restrictions.

21. The computer program product of claim 20, further comprising:

instructions executed during installation of a communications program subsequent to setting access controls for each communications program within the data processing system as a function of the content label categories and associated user restrictions for checking for existing access control settings for other communications programs and for setting access controls for the communications program being installed utilizing the existing access control settings.